IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

GARY LEIF and CAROL HICKENBOTTOM,

Plaintiffs,

v.

UMPQUA BANK; HSBC BANK USA, NA, as trustee for WELLS FARGO ASSET SECURITIES CORPORATION, MORTGAGE ASSET-BACKED PASS-THROUGH CERTIFICATES SERIES 2007-PA3; and QUALITY LOAN SERVICE CORPORATION OF WASHINGTON,

Defendants.

Case No. 6:16-cv-02043-JR

FINDINGS AND RECOMMENDATION

RUSSO, Magistrate Judge:

Pro se plaintiffs Gary Leif and Carol Hickenbottom initiated this action against defendants Umpqua Bank ("Umpqua"), Quality Loan Service Corporation of Washington ("Quality"), and HSBC Bank USA, NA ("HSBC"), as trustee for the Wells Fargo Asset Securities Corporation, Mortgage Asset-Backed Pass-Through Certificates Series 2007-PA3 ("Loan Trust"). Umpqua and HSBC separately move to dismiss plaintiffs' complaint pursuant to Fed. R. Civ. P. 12(b)(6). Umpqua and HSBC also move for judicial notice of certain publicly available facts. For the reasons set forth below, Umpqua's and HSBC's motions should be granted and this case should be dismissed.

BACKGROUND

In April 2007, plaintiffs took out a loan from Umpqua, in the amount of $565,500, to purchase a residential property in Roseburg, Oregon ("Property"). Compl. Ex. B. Pursuant to this transaction, plaintiffs executed a Promissory Note ("Note") in favor of Umpqua. Id. The Note was secured by a Deed of Trust ("DOT"), which lists Umpqua as the lender, AmeriTitle as the trustee, and Mortgage Electronic Registration Systems, Inc. ("MERS") as the beneficiary, "acting solely as a nominee for Lender and Lender's successors and assigns." Compl. Ex. C. Pursuant to the DOT, plaintiffs agreed to make monthly mortgage payments as required under the Note; plaintiffs also agreed that they would be in default, and subject to foreclosure, if they failed to make such payments. Id. Additionally, both the Note and DOT stipulated that Umpqua could sell the Note and/or change the loan servicer "one or more times without prior notice" to plaintiffs. Id.; Compl. Ex. B.

In June 2007, Umpqua sold the Note to the Loan Trust. Compl. ¶¶ 10, 46. Wells Fargo Bank, N.A. ("Wells Fargo") began servicing plaintiffs' loan at that time. Id. at ¶ 11; Umpqua's Req. for Judicial Notice Ex. A.

In August 2014, plaintiffs stopped making the requisite loan repayments, thereby materially defaulting under the Note. Compl. Exs. E-F. In September 2014, MERS, acting as "nominee for Umpqua Bank, its Successors and/or Assigns," assigned the DOT to HSBC, as trustee for the Loan Trust. Compl. ¶ 11; Compl. Ex. D.

On July 5, 2016, Wells Fargo, "as servicing agent for HSBC," appointed Quality to serve as successor trustee for the DOT. Umpqua's Req. for Judicial Notice Exs. A-B. On July 15, 2016, Quality executed a Notice of Default and Election to Sell the Property. Compl. ¶ 11. The Notice of Default and Election to Sell explained that, unless plaintiffs provided the approximately $90,000 worth of payments necessary to make their loan current, the Property would be foreclosed on December 5, 2016. Compl. Ex. E. Quality also sent plaintiffs a Trustee's Notice of Sale containing the same information, as well as a "danger notice" pursuant to Or. Rev. Stat. § 86.756. Compl. Ex. F; Umpqua's Req. for Judicial Notice Ex. B.

On October 24, 2016, plaintiffs filed a complaint in this Court, asserting the following claims based on the allegedly improper securitization of their loan: (1) violation of the Truth in Lending Act ("TILA") against Umpqua; (2) fraud in the concealment against Umpqua; (3) unconscionability against Umpqua; (4) breach of fiduciary duty against Umpqua; (5) slander of title against all defendants; (6) wrongful foreclosure against HSBC; and (7) declaratory judgment against all defendants. Plaintiffs seek attorney fees, monetary damages "over $100,000 but not more than $1,000,000," pre- and post-judgment interest, and a decree from this Court that the foreclosure sale is cancelled and the DOT null and void. Compl. pg. 13. In November and December 2016, defendants filed the present motions.

STANDARD OF REVIEW[1]

Where the plaintiff "fails to state a claim upon which relief can be granted," the court must dismiss the action. Fed. R. Civ. P. 12(b)(6). To survive a motion to dismiss, the complaint must allege "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). For the purposes of the motion to dismiss, the complaint is liberally construed in favor of the plaintiff and its allegations are taken as true. Rosen v. Walters, 719 F.2d 1422, 1424 (9th Cir. 1983). Regardless, bare assertions that amount to nothing more than a "formulaic recitation of the elements" of a claim "are conclusory and not entitled to be assumed true." Ashcroft v. Iqbal, 556 U.S. 662, 680-81 (2009). Rather, to state a plausible claim for relief, the complaint "must contain sufficient allegations of underlying facts" to support its legal conclusions. Starr v. Bacca, 652 F.3d 1202, 1216 (9th Cir. 2011), cert. denied, 132 S.Ct. 2101 (2012).

---

[1] Although plaintiffs essentially identify the correct standard of review in their oppositions, they nonetheless conclude that dismissal is unwarranted because defendants do not offer proof rebutting their allegations. See Pls.' Resp. to Mot. Dismiss 5 ("[Umpqua] fails to specifically rebut any of Plaintiffs' complaint and allegations as a matter of fact"); Pls.' Resp. to HSBC's Mot. Dismiss 3 ("[HSBC] has failed to show or prove by admissible evidence, per the Federal Rules of Evidence, that Plaintiffs' Complaint does not positively state a cause of action"). As discussed herein, the Court must accept as true all well-pleaded allegations. In other words, defendants' failure to attack plaintiffs' factual allegations is not a legally valid basis to deny their motions.

Pro se pleadings are held to a less stringent standard than those drafted by lawyers. See, e.g., Haines v. Kerner, 404 U.S. 519, 520 (1972). The court, in many circumstances, instructs the pro se litigant regarding deficiencies in the complaint and grants leave to amend. Eldridge v. Block, 832 F.2d 1132, 1136 (9th Cir. 1987). Nevertheless, a pro se plaintiff's claims may be dismissed without leave to amend where it appears beyond doubt that the plaintiff can prove no set of facts that would entitle him or her to relief. Barrett v. Belleque, 544 F.3d 1060, 1061-62 (9th Cir. 2008).

DISCUSSION

Umpqua and HSBC argue that plaintiffs' complaint should be dismissed because it lacks factual support, is time-barred, and is based on theories that have been repeatedly rejected.

I. Preliminary Matters

Two issues must be resolved before reaching the substantive merits of defendants' motions. First, in response to defendants' motions, plaintiffs seek to introduce several allegedly recently discovered "new" facts and theories as the basis of their claims; in the alternative, plaintiffs request leave to file an amended complaint. Second, defendants request judicial notice of certain publicly filed documents.

A. New Assertions

Plaintiffs raise five new theories in opposing dismissal: (1) "the securitization of their loan "separat[ed]" the Note from the DOT; (2) the "Original 'Wet-Ink' Note, the Deed of Trust represents, is unaccounted for, despite numerous demands for disclosure of documents"; (3) the 2014 assignment of the DOT to the Loan Trust was ineffective because it was "seven (7) years after the closing date of said Trust"; (4) "Defendant was required to negotiate the Plaintiff's mortgage and note properly, in order to fulfill their obligation as Trustee, in the best interest of Plaintiffs"; and (5) HSBC "concealed [its] actions from Plaintiffs and did not send proper notice as required by 15 U.S.C. § 1641(g)." Pls.' Resp. to Umpqua's Mot. Dismiss 2-7; Pls.' Resp. to HSBC's Mot. Dismiss 2-6. Although somewhat difficult to decipher, plaintiffs appear to base most of their new allegations on the attached "Chain of Title Analysis & Mortgage Fraud Investigation," which they describe as "newly discovered evidence [from] September 2016." Id.

Plaintiffs' attempt to inject new facts and theories into this lawsuit via their response brief is unavailing. Significantly, "'new' allegations contained in the [plaintiffs'] opposition motion . . . are irrelevant for Rule 12(b)(6) purposes." Schneider v. Cal. Dep't of Corr., 151 F.3d 1194, 1197 n.1 (9th Cir. 1998). Furthermore, contrary to plaintiffs' assertion, the "Chain of Title Analysis & Mortgage Fraud Investigation" was completed on "December 27, 2013." Pls.' Resp. to Umpqua's Mot. Dismiss Ex. A, at 14.[2] Accordingly, these allegedly new facts and theories would have been known to plaintiffs at the time they filed their complaint in October 2016.

[2] Plaintiffs attach a virtually identical "Chain of Title Analysis & Mortgage Fraud Investigation" to their response to HSBC's motion, except that it was prepared in September 2016. Pls.' Resp. to HSBC's Mot. Dismiss Ex. B, at 15. That plaintiffs commissioned the same individual to provide a report with slightly updated information but the same legal conclusions prior to the filing of their complaint does not alter this Court's analysis or otherwise delay the accrual of their claims. Although not dispositive at this stage in the proceedings, the Court notes that analogous reports have been uniformly deemed unreliable and/or inadmissible. See Umpqua's

In any event, Oregon courts have consistently rejected similar theories. See, e.g., Oliver v. Delta Fin. Liquidating Trust, 2012 WL 3704954, *3 (D. Or. Aug. 27, 2012) ("a transfer of the promissory note automatically transfers the trust deed [such that no separation occurs and] Oregon law does not require the note's transfer to be recorded") (citations and internal quotations omitted); Hubbard v. Bank of Am., 2011 WL 2470021, *3 (D. Or. Apr. 21,) adopted by 2011 WL 2462961 (D. Or. June 20, 2011) ("show me the note" claims are "not viable [because] Oregon does not require any party to a trustee's sale to produce a physical copy of the original note") (citations and internal quotations and ellipses omitted); Deutsche Bank Trust Co. Ams. v. Walmsley, 277 Or.App. 690, 693-95, 374 P.3d 937 (2016) (arguments that "the note had to be transferred into the trust before the date that the trust closed . . . are unavailing"). Plaintiffs' final new assertion is unclear in that they do not specifically identify which defendant they are referring to; however, Umpqua is not a trustee and plaintiffs allege no facts in support of their conclusion that either Umpqua or HSBC improperly negotiated the Note or DOT, both of which are standard instruments.

B. Request for Judicial Notice

Umpqua requests that this Court take judicial notice of: (1) the Appointment of Successor Trustee, recorded in Douglas County on July 5, 2016; (2) foreclosure notices and affidavits recorded in Douglas County on October 26, 2016; (3) Securities and Exchange Commission ("SEC") Form 10-K, including Exhibit 31 thereto, filed with the SEC on March 24, 2008, by the Loan Trust and Wells Fargo; and (4) SEC Form 8-K filed with the SEC on June 27, 2007, by Wells Fargo Asset Securities Corporation. Umpqua's Req. for Judicial Notice 2. HBSC also

---

Mot. Dismiss 5-7 (collecting cases rejecting reports from Joseph Esquivel, the author of the September 2016 affidavit attached to plaintiffs' complaint and opposition to HSBC's motion, and Damion Emholtz, the author of the December 2013 and September 2016 "Chain of Title Analysis & Mortgage Fraud Investigations").

requests judicial notice of a "True and Certified Copy of The Note as previously provided with the 'CERTIFICATION OF NOTE PURSUANT TO THE OREGON FORECLOSURE AVOIDANCE PROGRAM.'" HSBC's Req. for Judicial Notice 2.

Plaintiffs did not file a response to defendants' motions for judicial notice. While plaintiffs state broadly in their briefs opposing dismissal that defendants' proffered documents "cannot be merely judicially noticed" because they "involve the same matters that are in controversy in this action," plaintiffs do not challenge their accuracy or the fact that they are part of the public record. Pls.' Resp. to Umpqua's Mot. Dismiss 5; Pls.' Resp. to HSBC's Mot. Dismiss 6. Under these circumstances, judicial notice is proper. Fed. R. Evid. 201(b); Santa Monica Food Not Bombs v. Santa Monica, 450 F.3d 1022, 1025 n.2 (9th Cir. 2006). Moreover, plaintiffs' complaint expressly relies on many of the same documents. See, e.g., Compl. ¶¶ 7-14; Compl. Exs. B-E. Defendants' requests for judicial notice are granted.

II. Federal Claim[3]

Plaintiffs allege Umpqua[4] acted in contravention of TILA by: (1) "being a Loan Originator and receiving compensation, an act prohibited pursuant to [12 C.F.R.] § 1026.36(d)(1)"; (2) receiving dual compensation in violation of [12 C.F.R.] § 1026.36(d)(2)"; (3) "steering Plaintiffs to a lender or to a mortgage transaction not in the best interest of the borrower, in order to receive greater compensation, in violation of [12 C.F.R.] § 1026.36(e)";

[3] Plaintiffs also assert a claim pursuant to the Declaratory Judgement Act; however, relief is not available under 28 U.S.C. § 2201 et seq. unless another cognizable substantive claim exists. Shroyer v. New Cingular Wireless Servs., 622 F.3d 1035, 1044 (9th Cir. 2010). Because plaintiffs' substantive allegations fail in myriad respects, the Court need not further address this claim.

[4] As noted in section I(A), although plaintiffs attempt to assert a TILA claim against HSBC in their opposition, the complaint's allegations are exclusively against Umpqua. Nevertheless, any TILA claim against HSBC would likewise be time-barred. See, e.g., HSBC's Reply to Mot. Dismiss 3.

and (4) "failing to notify Plaintiffs of the sale of Plaintiffs' purported Note and Deed of Trust to AHRLXX Securities, in violation of [12 C.F.R.] § 1026.39." Compl. ¶¶ 17-20. Umpqua contends that plaintiffs' TILA claim "is time-barred, reliant on regulations that did not exist at the time of the challenged conduct, defeated by plaintiffs' own allegations, and impermissibly conclusory." Umpqua's Mot. Dismiss 4.

Even construing plaintiffs' pleadings in the most favorable and liberal light, their complaint fails to state a plausible claim for relief under TILA. Notably, TILA claims have an either one or three year statute of limitations that runs from "the date of the occurrence of the violations." 15 U.S.C. § 1640(e). As such, claims under TILA generally accrue at the time the loan was originated. Moreno v. Bank of Am., NA, 2012 WL 1462338, *7 (D. Or. Apr. 27, 2012) (citing King v. California, 784 F.2d 910, 914 (9th Cir. 1986)). Because plaintiffs' loan was generated and sold in 2007, any TILA claim is at least six years too late. See id. (dismissing TILA claims under analogous circumstances).

Plaintiffs' TILA claim also fails at the pleading level. Aside from the fact that the regulations at issue did not exist in 2007, plaintiffs do not include any facts to support their legal conclusions. Compl. ¶¶ 6-14, 17-20; see also Watkins v. Regions Mortg. Inc., 2013 WL 2444124, *4 (N.D. Ala. May 31, 2013), aff'd, 555 Fed.Appx. 922 (11th Cir. 2014) (absent specific language from Congress, "there is a clear presumption against retroactive application and a well settled 'principle that the legal effect of conduct should ordinarily be assessed under the law that existed when the conduct took place'") (quoting Landgraf v. USI Film Prods., 511 U.S. 244, 265 (1994)); Jara v. Aurora Loan Servs., 852 F.Supp.2d 1204, 1209 n.6 (N.D. Cal. 2012), aff'd, 633 Fed.Appx. 651 (9th Cir. 2016) (TILA provision that became effective after the plaintiff's loan was originated was inapplicable). In other words, because the securitization of plaintiffs' loan does not constitute a per se TILA violation, more detailed factual allegations are required in order to state a claim.

Additionally, the express language of these regulations, as well as plaintiffs' own allegations, undermines their TILA claim. For instance, 12 C.F.R. § 1026.39 only requires loan purchasers to notify borrowers of the sale. 12 C.F.R. § 1026.39(a)-(b); see also 15 U.S.C. § 1641(g) (when a mortgage loan is sold, "the creditor that is the new owner or assignee of the debt shall notify the borrower in writing of such transfer"). Plaintiffs' assertion that Umpqua sold their loan, as opposed to buying it, dooms their claim under this provision. Compl. ¶ 10. Likewise, plaintiffs state that Umpqua "finance[d] the loan . . . using a warehouse line of credit from [the Loan] Trust." Id. at ¶ 37. Yet, because judicially noticeable facts establish that plaintiffs' loan was funded by Umpqua months before it was sold to the Loan Trust, Umpqua falls outside of the definition of a "loan originator." Defendants' motions should be granted as to plaintiffs' TILA claim.

III. State Law Claims

Where a district court dismisses "all claims over which it has original jurisdiction," it may, in its discretion, "decline to exercise supplemental jurisdiction" over pendent state law claims. 28 U.S.C. § 1367(c)(3); Lacey v. Maricopa Cnty., 649 F.3d 1118, 1137 (9th Cir. 2011). This Court ordinarily declines to exercise supplemental jurisdiction over a plaintiff's state law claims. Regardless, because plaintiffs are not represented by counsel the Court will retain jurisdiction, at least at this stage in the proceedings, in order to briefly address the merits of plaintiffs' state law claims.

Initially, plaintiffs' state law claims are based predominantly on the theory that the securitization of their loan precludes defendants from lawfully foreclosing on the Property. It is well-established, however, that the securitization of a loan does not prevent the holder of the promissory note from foreclosing on the subject property. See Chruszch v. Bayview Loan Servicing, LLC, 2015 WL 6756130, *3 (D. Or. Nov. 4, 2015) ("[t]here is nothing unlawful about securitizing a loan [such that] courts have uniformly rejected the argument that securitization of a mortgage loan provides the mortgagor a cause of action"); see also Maixner v. BAC Home Loans Servicing, LP, 2011 WL 7153929, *9 (D. Or. Oct. 26, 2011), adopted by 2012 WL 379618 (D. Or. Feb. 3, 2012) ("Maixner's persistent belief that her obligation to repay their mortgage loan has been extinguished as the result of its sale and securitization is unsupported by any identifiable legal theory"). As noted in section I(A), Oregon courts have repeatedly dismissed the claims and theories presented in this case, whether based on securitization or otherwise. See, e.g., Strong v. Lehman Brothers Bank, 2016 WL 6093476, *1-2 (D. Or. Oct. 17, 2016).

Plaintiffs state law claims are fatally flawed in other respects. For example, plaintiffs' fraud in the concealment claim neglects to identify "the time, place, and specific content of the false representation [or material omission,] as well as the identities of the parties to the misrepresentations." Compl. ¶¶ 6-14, 22-39; Schreiber Distrib. v. Serv-Well Furniture Co., 806 F.2d 1393, 1401 (9th Cir. 1986); see also Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097, 1106 (9th Cir. 2003) (when asserting a fraud-based claim, the plaintiff is required to "set forth what is false or misleading about a statement [or omission]"). As a result, plaintiffs' fraud in the concealment claim lacks the requisite specificity under Fed. R. Civ. P. 9(b).

Plaintiffs' unconscionability claim fails for a similar reason. Namely, plaintiffs do not allege that any term of the Note or DOT was itself unconscionable; rather, as with their fraud claim, they assert that Umpqua's concealment of its intention to sell their loan somehow placed them at an unspecified "special disadvantage." Compl. ¶¶ 35-39. Regardless, "Oregon courts have repeatedly held that contract unconscionability is not a basis for an affirmative claim." Horner v. Plaza Home Mortg., Inc., 2016 WL 3574551, *2 (D. Or. July 1, 2016) (citation omitted). As such, no remedy exists absent identification of an unconscionable contract term. Id. Further, given that plaintiffs do not dispute that they received a $565,000 loan to purchase the Property, it is difficult to understand how plaintiffs were harmed or otherwise placed at a "special disadvantage" by defendants' actions. See Canzoni v. Countrywide Bank, 2016 WL 3251403, *4 (W.D. Wash. June 13, 2016) (securitization of the plaintiff's loan did not give rise to an unconscionability claim as a matter of law because "the loan 'deal' did not change - he agreed to pay principal and interest for 30 years, secured by his home, in exchange for the purchase price for the home").

Moreover, "[i]t is well-settled under Oregon law that lenders do not have a fiduciary duty towards borrowers." Ramos v. Wells Fargo Bank, N.A., 2012 WL 4863708, *4 (D. Or. Oct. 5, 2012) (citations omitted); see also Horner, 2016 WL 3574551 at *2 ("creditor-debtor relationships do not trigger fiduciary duties"). As a result, plaintiffs' breach of fiduciary duty claim "fails as a matter of law." Ramos, 2012 WL 4863708 at *4.

Concerning their slander of title claim, plaintiffs must allege facts supporting the existence of special damages, which, in this context, generally require that "the plaintiff had ready, willing and able buyers." Erlandson v. Pullen, 45 Or.App. 467, 473, 608 P.2d 1169 (1980) (citation and internal quotations omitted). Because such allegations are absent, plaintiffs cannot state a claim. See Longley v. Wells Fargo Bank, N.A., 2011 WL 1637334, *4 (D. Or. Mar. 29), adopted by 2011 WL 1636934 (D. Or. Apr. 29, 2011) (dismissing the plaintiff's slander of title claim where the complaint and amended complaint "are both entirely devoid of any factual allegations that he has suffered special damages as the result of any action by either defendant"). Likewise, plaintiffs' contention that MERS' assignment was fraudulent because the person who executed it on behalf of MERS "is not an employee of MERS, but of Wells Fargo," provides no basis for a slander of title claim. Compl. ¶ 51; see also Danso v. Ocwen Loan Servicing, LLC, 2016 WL 4437653, *4 (D. Md. Aug. 23, 2016) ("[c]ourts have held that this practice [of mortgage services employees signing documents on behalf of MERS] does not give rise to a legally cognizable claim") (collecting cases). In any event, plaintiffs' slander of title claim is time-barred pursuant to the one-year statute of limitations, which commenced when the assignment of the DOT was recorded in 2014. Horner, 2016 WL 3574551 at *3.

Aside from the fact that "Oregon does not recognize a wrongful foreclosure tort claim," plaintiffs' final state law claim is contradicted by judicially noticeable facts. Medici v. JP Morgan Chase Bank, N.A., 2014 WL 199232, *4 (D. Or. Jan. 15, 2014) (citing Rapacki v. Chase Home Fin. LLC, 797 F.Supp.2d 1085, 1090-91 (D. Or. 2011)). Critically, while plaintiffs conclude HSBC "does not own this loan, or the corresponding note," due to securitization, publicly filed documents reveal that HSBC is, in fact, the Note holder and therefore possesses the legal right to foreclose. Compare Compl. ¶¶ 54-56, with Umpqua's Req. for Judicial Notice Exs. A-B and HSBC's Req. for Judicial Notice Ex. 1; see also Deutsche Bank, 277 Or.App. at 695-97 (despite securitization, the loan trust had the power to foreclose because the promissory note had been indorsed to it and the borrower was in default). Accordingly, plaintiffs fail to state a plausible common law claim for wrongful foreclosure.

Finally, while not dispositive, the Court notes that plaintiffs' requested remedy is inappropriate. Plaintiffs are essentially seeking to expunge their debt and retain the Property as a result of defendants' allegedly wrongful actions. Yet it is undisputed that plaintiffs borrowed more than half-a-million dollars for their personal benefit and contractually agreed to repay these funds or face foreclosure of the Property. Thus, even if plaintiffs were somehow able to hold defendants liable under the facts alleged, they would nonetheless remain responsible for fulfilling their debt obligation.

RECOMMENDATION

Umpqua's Motion to Dismiss (doc. 6) and Request for Judicial Notice (doc. 7) should be granted. Similarly, HSBC's Motion to Dismiss (doc. 24) and Request for Judicial Notice (doc. 25) should be granted. Umpqua's request for oral argument is denied as unnecessary.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties shall have fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any factual determination of the Magistrate Judge will be considered as a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to this recommendation.

DATED this 15th day of February 2017.

Jolie A. Russo

Jolie A. Russo
United States Magistrate Judge